IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

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| IN RE ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION | Master File No. 2:12-MD-02327 MDL 2327 <br><br> JOSEPH R. GOODWIN U.S. DISTRICT JUDGE |

DEFENDANTS' MOTION TO EXCLUDE THE OPINIONS OF SUZANNE PARISIAN,
M.D., RELATING TO THE TVT-SECUR DEVICE
[WAVE 2]

Pursuant to Federal Rules of Evidence 401, 402, 403, 404 and Rule 702, Defendants

Ethicon, Inc. and Johnson & Johnson (collectively, "Ethicon") move to exclude the testimony of

Plaintiff's expert, Suzanne Parisian, M.D., in its entirety for the cases identified in Exhibit A for

the following reasons:[1]

*First*, Dr. Parisian is not qualified to offer opinions on highly scientific topics including

product development, design, risks, testing, manufacturing, studies, and the standard of care for

treating physicians, and she and does not employ a reliable methodology on such issues.

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[1] Plaintiffs' Rule 26 disclosure states that they recognize the Fourth Circuit's affirmance of this Court's exclusion of evidence of compliance with the 510(k) process and "reserve the right to designate" Dr. Parisian "[i]n the event of a contrary ruling." Pls. General Expert Desig., p. 4. Ethicon understands this to mean that Dr. Parisian is not designated at all if no FDA evidence is admitted, even though this is potentially inconsistent with Dr. Parisian's current disclaimer of reliance on FDA regulations. In addition, Ethicon notes that this "reservation of right to designate" in some instances puts Plaintiffs' number of experts over the allotted five.

*Second*, Dr. Parisian's opinions on corporate state of mind or intent should be excluded because she is not qualified and does not have a reliable methodology. Further, the testimony is irrelevant and not helpful to the trier of fact.

*Third,* Dr. Parisian's regulatory opinions are inadmissible because they are irrelevant to the extent she cites to Ethicon allegedly misleading the FDA, or withholding information from the FDA. Her regulatory opinions also amount to impermissible "narrative" testimony and constitute legal conclusions.

*Fourth,* Dr. Parisian should not be permitted to opine on foreign regulatory matters because she is not qualified; she does not employ a reliable methodology; and this testimony would not be helpful to the jury.

*Fifth,* Dr. Parisian's warnings opinions on the TVT-Secur are inadmissible because she is not qualified to opine on warnings and she does not apply a reliable methodology.

*Sixth*, Dr. Parisian should not be permitted to testify as to any product other than the TVT-Secur—the only product for which she supplied an expert report and was designated as an expert in Wave II.

Defendants incorporate by reference their Memorandum in Support and the following exhibits:

| Exhibit | Description |
| --- | --- |
| A | List of Applicable Cases as to TVT-Secur Device |
| B | Suzanne Parisian Expert Witness Report, Jan. 30, 2016: TVT-Secur ("TVT-S Rep.") |
| C | Parisian 3/8/16 Prolift +M Dep. Tr. |

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| D | *Rheinfrank v. Abbott Labs.*, Case No. 1:13-cv-144-SJD (S.D. Ohio), Order Ruling on *Daubert* Motions (ECF No. 298) |
| E | Parisian 3/8/16 TVT-S Dep. Tr. |
| F | Parisian 2/12/15 (*Garcia*) TVT-S Dep. Tr. |

FOR THESE REASONS, Defendants respectfully request that this Court enter an Order granting their Motion to Exclude Suzanne Parisian, M.D.

Respectfully submitted,

*/s/ Christy D. Jones*
Christy D. Jones
Butler Snow LLP
1020 Highland Colony Parkway
Suite 1400 (39157)
P.O. Box 6010
Ridgeland, MS  39158-6010
(601) 985-4523
christy.jones@butlersnow.com

*/s/ David B. Thomas*
David B. Thomas (W.Va. Bar #3731)
Thomas Combs & Spann PLLC
300 Summers Street
Suite 1380 (25301)
P.O. Box 3824
Charleston, WV 25338
(304) 414-1807
dthomas@tcspllc.com

COUNSEL FOR DEFENDANTS
ETHICON, INC. AND JOHNSON & JOHNSON

## CERTIFICATE OF SERVICE

I certify that on this day, I electronically filed this document with the clerk of the court using the CM/ECF system, which will send notification of this filing to CM/ECF participants registered to receive service in this MDL.

/s/ Christy D. Jones
Christy D. Jones